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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/204,888	12/03/1998	CHARLES A. ELDERING	8887.3002	9427
27832	7590	10/05/2004		
EXPANSE NETWORKS, INC. 6206 KELLERS CHURCH ROAD PIPERSVILLE, PA 18947			EXAMINER BUI, KIEU OANH T	
			ART UNIT	PAPER NUMBER
			2611	

DATE MAILED: 10/05/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b> 09/204,888	<b>Applicant(s)</b> ELDERING ET AL.	
	<b>Examiner</b> KIEU-OANH T BUI	<b>Art Unit</b> 2611	

**-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --**

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 02 July 2004.
- 2a) ☒ This action is **FINAL**.                      2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 91-101 and 107-113 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 91-101 and 107-113 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
     Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
     Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |   |   |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)  | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date <u>08/09/2004</u> . | 6) <input type="checkbox"/> Other: _____  |

## **DETAILED ACTION**

### ***Terminal Disclaimer***

1. The terminal disclaimers filed on 4/11/200 disclaiming the terminal portion of any patent granted on this application which would extend beyond the expiration date of patent 6,457,010 and/or to any patent granted on pending application 09/205,119 has been received.

### ***Remarks & Response to Arguments***

2. Applicant's arguments (filed 10/30/2003) with respect to claims 91-101, 107-109 and new claims 110-113 have been considered but are moot in view of the new revised ground(s) of rejection. Claims 78-90 and 102-106 were canceled in the amendment dated 07/02/04.

### ***Claim Rejections - 35 USC § 103***

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

*(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.*

4. Claims 91-101, and 107-113 are rejected under 35 U.S.C. 103(a) as being unpatentable over Alexander et al (US Patent 6,177,931 B1) in view of Sitnik (US Patent 6,160,570).

Regarding claim 91, Alexander discloses a method for generating a subscriber profile for a subscriber of television services, the method comprising:

monitoring subscriber interactions with a television (col. 28, line 12 - col. 29, line 11);  
retrieving heuristic rules associated with at least some subset of the subscriber interactions, i.e., profile program "learns" or performs "sophisticated analysis" (col. 29, line 55 -

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col. 30, line 44), wherein the heuristic rules associate subscriber television viewing habits with non-television viewing characteristics about the subscriber (an individual viewing habits compared with the profile of others , col. 30, lines 38-44, wherein the profile of others include demographic characteristics or non-television viewing characteristics , e.g., viewer's sense of humor, chronological age, activity age, whether the user has kid or not, and/or having pets or not, see col. 30/lines 17-37); and

applying the heuristic rules to the subscriber interactions to generate the subscriber profile (col. 30, lines 1-44).

Alexander discloses at least the subset of program genre (col. 28, lines 1-21, col. 29, lines 37-67) change to family size (married status, col. 30, lines 29-32), program genre to age (col. 30, lines 29-31), yet Alexander does not mention “program genre to income level, and program genre to gender”; however, in the same environment of providing program services to users based on the user's profile or “heuristic rules”, Sitnik teaches to include collecting viewer profiles further including the user's sex or gender, the yearly income level, personal preferences, and personal habits (col. 1/line 58 to col. 2/line 4 for an example of appropriate images and programs to children under the age of thirteen; Fig. 3, and col. 7/line 40-57 & col. 8/line 53 to col. 9/line 4). Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify Alexander's technique with Sitnik's teaching technique of collecting demographics information of users including sex or gender, and the income level in order to target programs and services including advertisements to appropriate viewers at a particular geographical location.

Considering claims 91-92 and 98, Alexander discloses a method for generating a subscriber profile for a subscriber of television services, the method comprising: a) monitoring subscriber interactions with a television (col. 28, line 12 - col. 29, line 11) b) retrieving heuristic rules associated with at least some subset of the subscriber interactions, e.g., the profile program "learns" or performs "sophisticated analysis" (col. 29, line 55 - col. 30, line 15), wherein the heuristic rules related to age and family size, i.e., wherein the profile of others include demographic characteristics or non-television viewing characteristics , e.g., viewer's sense of humor, chronological age, activity age, whether the user has kid or not, and/or having pets or not, see col. 30/lines 17-37); and c) applying the heuristic rules to the subscriber interactions to generate the subscriber profile (col. 30, lines 17-37).

Alexander does not further mention "wherein the heuristic rules predict demographic characteristics about the subscriber including at least some subset of gender and income level"; however, in the same environment of providing program services to users based on the user's profile or "heuristic rules", Sitnik teaches to include collecting viewer profiles further including the user's sex or gender, the yearly income level, personal preferences, and personal habits (col. 1/line 58 to col. 2/line 4 for an example of appropriate images and programs to children under the age of thirteen; Fig. 3, and col. 7/line 40-57 & col. 8/line 53 to col. 9/line 4). Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify Alexander's technique with Sitnik's teaching technique of collecting demographics information of users including sex or gender, and the income level in order to target programs and services including advertisements to appropriate viewers at a particular geographical location.

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Claims 93 and 94 are met by the monitoring, retrieving and applying of the EPG (content characteristics) as disclosed throughout the entire reference including but not limited to col. 28, line 11-col. 30, line 37.

Claim 95-97 are met by the combination of Alexander and Sitnik as the association of subscriber interactions (Alexander, col. 28, line 12 - col. 29, line 1 and col. 30, lines 7-9) with specific demographic characteristics or non-interaction traits (age, married, viewer with children, Alexander, col. 30, lines 17-37). Alternatively, Claims 95-97 are met by the association of subscriber interactions (an individual viewer profile) with viewer profile of others (Alexander, col. 30, lines 38-44), wherein the viewer profile of others include demographic characteristics or non-interaction traits, i.e., viewer's sense of humor, chronological age, activity age, whether the user has kid or not, and/or having pets or not, see col. 30/lines 17-37). Sitnik teaches the gender and the income level concerned (as discussed earlier in claims 90-92).

Claims 99-101 are met by Alexander as Alexander discloses the retrieving content characteristics associated with content included in the subscriber interactions, wherein heuristic rules associate specific subscriber interactions with specific demographic characteristics such as age and married status (family size) at a particular location (col. 28, lines 11-52 and col. 30, lines 30-44).

As for claims 107-113, these claims with same limitations for a method for generating a demographic profile a subscriber based on subscriber interactions with a television, i.e., related to gender and income level, are rejected for the reasons given in the scope of claims 91-101 as discussed in details above.

*Response to Arguments*

5. Applicant's arguments filed on 7/2/04 have been fully considered but they are not persuasive.

Applicants' arguments seem to be lengthy; however, they are all focused in one main issue of "heuristic rules" related to gender and income level of the users, wherein the system can collect those information for providing services correspondingly in interactive program guides. This technique is already disclosed within the related arts so many times and repeatedly used within the interactive program guide EPG or IPG system for years. Applicants argue that Alexander does not suggest "heuristic rules" and so on; however, the Examiner clearly states that within the step of "retrieving heuristic rules associated with at least some subset of the subscriber interactions" Alexander teaches that profile program "learns" or performs "sophisticated analysis" (col. 29, line 55 - col. 30, line 44), wherein the heuristic rules associate subscriber television viewing habits with non-television viewing characteristics about the subscriber (an individual viewing habits compared with the profile of others, col. 30, lines 38-44, wherein the profile of others include demographic characteristics or non-television viewing characteristics, e.g., viewer's sense of humor, chronological age, activity age, whether the user has kid or not, and/or having pets or not, see col. 30/lines 17-37). Yet Alexander does not further mention "program genre to income level, and program genre to gender"; however, in the same environment of providing program services to users based on the user's profile or "heuristic rules" as explained, Sitnik teaches to include collecting viewer profiles further including the user's sex or gender, the yearly income level, personal preferences, and personal

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habits (col. 1/line 58 to col. 2/line 4 for an example of appropriate images and programs to children under the age of thirteen; Fig. 3, and col. 7/line 40-57 & col. 8/line 53 to col. 9/line 4). Therefore, the combination of Alexander and Sitnik is perfectly proper and valid because the income level and the gender are simply additional/or other attributes in defining more preferred group of peoples for the broadcasters or advertisers to target appropriate users.

In response to applicant's argument that the references fail to show certain features of applicant's invention, it is noted that the features upon which applicant relies (i.e., heuristic rules may be logical rules or may be rules expressed in terms of conditional probabilities and corresponding examples on paragraph 2 of page 9 of the amendment) are not recited in the rejected claim(s). Although the claims are interpreted in light of the specification, limitations from the specification are not read into the claims. See *In re Van Geuns*, 988 F.2d 1181, 26 USPQ2d 1057 (Fed. Cir. 1993).

Therefore, the Examiner disagrees with the Applicants' arguments and stands with the disclosure and teaching of Alexander and Sitnik as previously disclosed and now revised with discussion in this Final office action.



***Conclusion***

6. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

7. **Any response to this action should be mailed to:**

Commissioner of Patents and Trademarks

Washington, D.C. 20231

**or faxed to:**

**(703) 872-9306, (for Technology Center 2600 only)**

*Hand-delivered responses should be brought to Crystal Park I.I., 2121 Crystal Drive, Arlington, VA, Sixth Floor (Receptionist).*

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8. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Krista Kieu-Oanh Bui whose telephone number is (703) 305-0095. The examiner can normally be reached on Monday-Friday from 9:00 AM to 6:30 PM, with alternate Fridays off.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Christopher Grant, can be reached on (703) 305-4755.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to Technology Center 2600 Customer Service Office whose telephone number is (703) 306-0377.

Krista Bui  
Art Unit 2611  
September 15, 2004



**KRISTA BUI**  
**PATENT EXAMINER**